

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi
and Jakup Krasniqi**

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

Date: 27 October 2021

Language: English

Classification: Public

Krasniqi Defence Submissions

for Eighth Status Conference

Specialist Prosecutor

Jack Smith

Counsel for Victims

Simon Laws QC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson QC

Counsel for Rexhep Selimi

David Young

Counsels for Jakup Krasniqi

Venkateswari Alagendra, Aidan Ellis

I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby provides written submissions for the Eighth Status Conference in accordance with the Order Setting the Date for Eighth Status Conference and for Submissions.¹ The Defence reserves the right to develop additional submissions orally at the Status Conference.

II. RECENT PROCEDURAL HISTORY

2. On 14 September 2021, at the Seventh Status Conference, the Pre-Trial Judge issued oral orders including: extending the deadline for the Specialist Prosecutor’s Office (“SPO”) to complete Rule 102(1)(b)² disclosure (including provision of translations) to 1 November 2021 and providing for any application for extension to be made in writing by 27 October 2021;³ and extending the deadline for the Defence to request Rule 102(3) material until 5 November 2021.⁴

3. On 7 October 2021, the Defence submitted its Second Request for Rule 102(3) material, comprising 5,945 items. On 14 October 2021, the SPO requested an extension of time to respond to this Request and an extension of the SPO’s Rule 102(3) deadlines generally.⁵ On 18 October 2021, the Pre-Trial Judge suspended the SPO’s deadlines and ordered the parties to submit their observations on the Extension Request at the Eighth Status Conference.⁶

¹ KSC-BC-2020-06, F00531, Pre-Trial Judge, *Order Setting the Date for Eighth Status Conference and for Submissions* (“Order”), 18 October 2021, public.

² Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

³ KSC-BC-2020-06, In Court – Oral Order, *Order on SPO’s Deadline Related to Rule 102(1)(b) Material*, 14 September 2021, public.

⁴ KSC-BC-2020-06, In Court – Oral Order, *Order on Defence Deadlines in Relation to Rule 102(3) Material* (“Rule 102(3) Oral Order”), 14 September 2021, public.

⁵ KSC-BC-2020-06, F00527, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit* (“SPO Extension Request”), 14 October 2021, public, paras 3-6.

⁶ KSC-BC-2020-06, F00528, Pre-Trial Judge, *Order in Relation to Prosecution Request for Extension of Time Limit*, 18 October 2021, public, para. 14.

4. On 18 October 2021, the Pre-Trial Judge listed the Eighth Status Conference to take place on 29 October 2021 and ordered the parties to provide written submissions, if they so wish, no later than 27 October 2021.⁷

5. On 25 October 2021,⁸ the Defence received the SPO's Amended Rule 102(3) Notice.⁹ The Amended Notice concerns 24,841 entries and covers 1,861 pages.¹⁰

6. On 25 October 2021, the Defence also received the SPO's preliminary witness list,¹¹ which is 399 pages in length.

7. On 27 October 2021, the Defence submitted its Third Request for Rule 102(3) material to the SPO, comprising 8,305 items.

III. SUBMISSIONS

A. DISCLOSURE

Rule 102(3) Time Limits

8. The SPO Extension Request should be assessed in the context of the ongoing detention of Mr. Krasniqi and its impact on Defence investigations and overall preparation for trial. While the Defence understands that, practically, extensions are

⁷ Order, para. 18.

⁸ The filing was notified to the Defence at 11.12 on 25 October 2021, having been filed by the SPO at 23.56 on 22 October 2021.

⁹ KSC-BC-2020-06, F00543, Specialist Prosecutor, *Prosecution Amended Rule 102(3) Notice Pursuant to F00421*, 22 October 2021, public, with Annexes 1-2, confidential.

¹⁰ *Ibid.*, para. 3.

¹¹ KSC-BC-2020-06, F00542, Specialist Prosecutor, *Prosecution Submission of Preliminary Witness List ("SPO Preliminary Witness List")*, 22 October 2021, public, with Annex 1, strictly confidential and *ex parte* and Annex 2, confidential.

now required (not only for the SPO but also for the Defence as set out below), the resulting delay should be taken into consideration in the second detention review.

9. The Defence emphasises that the SPO has known the volume of Rule 102(3) material and the need for protective measures in relation to that material since the outset of this case. The SPO submitted at the very first status conference that there would be “close to 100,000” items of Rule 102(3) material and that “[t]he need for redactions is anticipated for a significant percentage of these items”.¹² Having reviewed the material, the SPO would also have been aware of both the length and languages of the Rule 102(3) items.¹³ None of these factors are new or unforeseeable to the SPO.

10. Moreover, the volume of material which would be requested by the Defence was also eminently foreseeable. Whilst the SPO refer to the “substantial overall volume” of the Second Krasniqi Defence Request,¹⁴ this Request related to less than 6,000 items which in context represents less than 9% of the approximately 68,000 items on the Rule 102(3) Notice. It was not only foreseeable but inevitable that the SPO would receive requests for a substantial proportion, if not all, of the items contained on the Rule 102(3) Notice. The SPO should have been prepared for such requests and the delay which will result from the SPO Extension Request is of its own making.

11. The Defence appreciates that, trying to be practical in the current situation, extensions are likely to be required. Indeed, at the Seventh Status Conference, the Defence itself expressed concern about the Rule 102(3) time limits applicable to the

¹² KSC-BC-2020-06, F00076, Specialist Prosecutor, *Prosecution Submissions for First Status Conference*, 13 November 2020, public, para. 16.

¹³ SPO Extension Request, para. 3.

¹⁴ *Ibid.*

Defence and sought an extension.¹⁵ In finding good cause to grant that request, the Pre-Trial Judge recognised, first, the “vast number of documents” concerned and, second, that “assessment of materiality would be aided by review of the SPO’s Rule 102(1)(b) disclosure”.¹⁶ In the light of those factors and the SPO Extension Request, the Defence invites the Pre-Trial Judge to consider whether there is good cause to extend all the applicable Rule 102(3) time limits, including the deadlines applicable to the Defence.

12. In order to assist the Pre-Trial Judge in managing these issues, the Defence confirms that on 27 October 2021 it submitted its Third Request to the SPO comprising 8,305 items. The Defence is preparing further requests which are likely to be similar or greater in volume.

13. In the circumstances, whilst the Defence does not oppose the extensions sought by the SPO in relation to the Rule 102(3) material, the resulting delay should be taken into consideration in assessing the proportionality of ongoing detention in the second detention review. All the issues arising from the Rule 102(3) material have been foreseeable to the SPO for many months. The delay arising from the extensions is of the SPO’s own making. It must not be allowed to prolong Mr. Krasniqi’s detention.

14. Furthermore, the Defence submits that there is good cause to extend the deadline for the Defence to make its final Rule 102(3) requests (currently 5 November 2021) for the following reasons:-

- a. From receipt of the SPO’s Amended Rule 102(3) Notice on 25 October 2021, the current timetable allows the Defence just 11 days to assess the

¹⁵ KSC-BC-2020-06, Transcript of Hearing, 14 September 2021 (“Transcript of 14 September 2021”), public, p. 576, line 19 to p. 577, line 24.

¹⁶ Rule 102(3) Oral Order.

materiality of the 24,841 items on the Amended Notice. The number of items involved was not known at the Seventh Status Conference when the deadline of 5 November 2021 was set. Eleven days is manifestly insufficient to properly assess this volume of items;

- b. The SPO's provisional witness list was also received by the Defence on 25 October 2021 and comprises around 400 pages. The witnesses named on that list are highly relevant to the assessment of materiality of the items on the Rule 102(3) Notice. Again 11 days is insufficient to consider the Rule 102(3) Notice against the provisional witness list;
- c. The Pre-Trial Judge previously correctly recognised the link between the review of the SPO's Rule 102(1)(b) disclosure and the Defence assessment of the materiality of items on the Rule 102(3) Notice. The SPO's Rule 102(1)(b) disclosure deadline has been extended until 1 November 2021 – just 4 days prior to the current deadline for the Defence to make Rule 102(3) requests. At the time of filing these submissions, the Defence does not know whether any further extension will be requested by the SPO.

15. In seeking to extend the deadline for making Rule 102(3) requests, the Defence is not seeking to delay matters. Having more time to review the Rule 102(3) Notice is likely to allow the Defence to focus and narrow its requests, which will expedite proceedings rather than delaying them.

Witness Packages

16. The Defence has repeatedly highlighted the importance of the SPO creating witness packages to link disclosure documents to the relevant witnesses.¹⁷ The Defence understands from emails exchanged with the SPO that this process can commence once ‘witness entities’ are created on Legal Workflow and made available to the parties. Now that a provisional witness list has been provided, there is no reason to delay further the creation of witness entities and the linking of documents to witnesses should commence as soon as possible (if it has not already). The Defence requests the Pre-Trial Judge to set a deadline at the Eighth Status Conference for the SPO to complete the creation of witness packages on Legal Workflow.

17. Considering that there are likely to be technical issues surrounding the use of Legal Workflow to link documents and the creation of witness entities, the Defence respectfully suggests that it would be useful to create a working forum between case managers from the SPO, the Defence and representatives of the Registry in order to discuss and address these issues. The Defence raised this proposal with the SPO prior to the Seventh Status Conference and, at that stage, the SPO agreed that it could be a useful and productive way forward.

B. TRANSLATIONS

¹⁷ KSC-BC-2020-06, F00228/RED, Krasniqi Defence, *Public Redacted Version of Krasniqi Defence Joinder to Thaçi Defence Request for Orders Related to Disclosure*, KSC-BC-2020-06/F00228, dated 18 March 2021, 25 March 2021, public, paras 4-5, 8, 10-11; F00234, Krasniqi Defence, *Krasniqi Defence Submissions for Fourth Status Conference* (“Defence Submissions Fourth Status Conference”), 22 March 2021, public, para. 7; Revised Transcript of Hearing, 24 March 2021 (“Transcript of 24 March 2021”), public, p. 342, line 24 to p. 343, line 18; F00401/RED, Krasniqi Defence, *Public Redacted Version of Krasniqi Defence Submissions for Sixth Status Conference*, KSC-BC-2020-06/F00401, dated 16 July 2021 (“Defence Submissions Sixth Status Conference”), 19 July 2021, public, para. 9; Revised Transcript of Hearing, 21 July 2021, public (“Transcript of 21 July 2021”), p. 487, line 15 to p. 488, line 9; F00465, Krasniqi Defence, *Krasniqi Defence Submissions for Seventh Status Conference* (“Defence Submissions Seventh Status Conference”), 13 September 2021, public, paras 4, 6; Transcript of 14 September 2021, p. 608, lines 19-20.

18. The Defence continues to be concerned about the availability of translations of core filings into Albanian.¹⁸ At the time written submissions were prepared for the Seventh Status Conference, there were 684 filing items available in English, 114 of which were available in Albanian. At the present time, there are 827 filing items available in English, 129 of which are available in Albanian.

19. The Defence has received translations of the Decision on Motions Challenging the Jurisdiction of the Specialist Chambers and the Decision on Defence Motions Alleging Defects in the Form of the Indictment.¹⁹ The Defence understands that the Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused has not yet been translated.²⁰

20. On 25 October 2021, the Defence requested that the translation of the SPO's provisional witness list²¹ into Albanian be prioritised.

21. The translation of the SPO's Pre-Trial Brief into Albanian will obviously be a very high priority for the Defence. The Defence requests that the SPO and the Registry take all possible steps to ensure that the translation of this critical document is prioritised.

¹⁸ KSC-BC-2020-06, F00196, Krasniqi Defence, *Krasniqi Defence Submissions for Third Status Conference*, 10 February 2021, public, paras 8-11, 23; Transcript of Hearing, 16 February 2021, public, p. 304, line 22 to p. 305, line 3; Defence Submissions Fourth Status Conference, paras 9-10; Transcript of 24 March 2021, p. 379, line 25 to p. 380, line 1; F00313/RED, Krasniqi Defence, *Public Redacted Version of Krasniqi Defence Submissions for Fifth Status Conference*, KSC-BC-2020-06/F00313, dated 18 May 2021, 18 May 2021, public, paras 12-14; Transcript of Hearing, 19 May 2021, public, p. 396, lines 10-13; Defence Submissions Sixth Status Conference, paras 10-13; Transcript of 21 July 2021, p. 501, lines 9-11; Defence Submissions Seventh Status Conference, paras 9-11.

¹⁹ KSC-BC-2020-06, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021, public; F00413/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, public.

²⁰ KSC-BC-2020-06, F00450, Pre-Trial Judge, *Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused*, 31 August 2021, public.

²¹ SPO Preliminary Witness List.

C. DEFENCE INVESTIGATIONS

22. As submitted at previous Status Conferences, the Defence has commenced investigations but remains constrained by various factors including constraints arising from the ongoing pandemic, the extent of redactions / protective measures and the ongoing disclosure process and disclosure review – including the time taken to review the Amended Rule 102(3) Notice, make requests for disclosure and actually review the Rule 102(3) material received from the SPO. The Defence has very recently received the SPO's provisional witness list, itself a lengthy document which is not organised in an intuitive manner.²² It remains the position of the Defence that a substantial period of investigations will be required after the provision of the Pre-Trial Brief and Rule 95(4) materials and after completion of full disclosure (including of the Rule 102(3) material requested by the Defence). The Defence is not in a position to provide any substantive update in relation to Rule 99(1) or Rule 95(5) and reserves the right to do so at a later stage.

D. NEXT STATUS CONFERENCE

23. The Defence respectfully submits that it is likely to be beneficial to schedule a further Status Conference prior to the Winter Recess.

Word count: 2,370

²² There is no index and no explanation of the order in which witnesses have been placed on the list. No indication is provided of the links between the witnesses and paragraphs of the Indictment, the Rule 86(3)(b) Outline or any other document. Indeed, to which Indictment location a witness is relevant is not always clear from the summary provided.



Venkateswari Alagenda

Wednesday, 27 October 2021

Kuala Lumpur, Malaysia.



Aidan Ellis

Wednesday, 27 October 2021

London, United Kingdom.